



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Joe Nixon
Akerman, LLP
1300 Post Oak Boulevard
Suite 2300
Houston, Texas 77056

MAY 16 2018

RE: MURs 6949 & 6951
Russell Ramsland

Dear Nixon:

On July 14, 2015, and July 23, 2015, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, on behalf of your clients, the Commission, on May 8, 2018, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618.

Sincerely

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: Russell Ramsland
6339 Desco Drive
Dallas, Texas 75225

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENTS:** Russell Ramsland¹ **MURS:** 6949 and 6951
5 Russell Ramsland for Congress f/k/a
6 Russell Ramsland Exploratory Committee
7 and Charles Anderson in his official capacity
8 as treasurer²
9

10 **I. INTRODUCTION**
11

12 The Complaints in these matters allege that Russell Ramsland ("Ramsland") and his
13 committee, Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles
14 Armstrong in his official capacity as treasurer ("Committee"), solicited and collected
15 contributions for the primary election in the 32nd Congressional District of Texas, but failed to
16 file a timely Statement of Candidacy and Statement of Organization. Both complaints allege that
17 Ramsland failed to include proper disclaimers on his committee's website and e-mails. Finally,
18 the complaint in MUR 6951 alleges that the Ramsland website improperly solicited primary,
19 primary runoff, and general election contributions, thus allowing donors to make excessive
20 contributions. Respondents deny the allegations, and claim that Ramsland had not decided to
21 become a candidate, but was merely testing the waters at the relevant times.

22 Based on the available information, the Commission exercises its prosecutorial discretion
23 and dismisses the allegations that: Russell Ramsland violated 52 U.S.C. § 30102(e)(1) by filing
24 an untimely Statement of Candidacy; Russell Ramsland for Congress f/k/a Russell Ramsland

¹ Ramsland lost the Republican primary election in Texas's 32nd Congressional District on March 1, 2016.

² On October 16, 2015, Ramsland filed a Statement of Candidacy with the Commission that designated Ramsland for Congress as his principal campaign committee; this committee was formerly known as Russell Ramsland Exploratory Committee. See Statement of Candidacy, Russell Ramsland (Oct. 16, 2015). On October 23, 2015, the Committee filed its Statement of Organization with the Commission. See Statement of Organization, Ramsland for Congress (Oct. 23, 2015). Although the Committee filed a Termination Report with the Commission, the Committee was informed that it may not terminate while these matters are pending.

Exploratory Committee and Charles Armstrong in his official capacity as treasurer violated 52 U.S.C. §§ 30103 and 30104 by failing to file a timely Statement of Organization and by not filing an October 2015 Quarterly Report; Ramsland or the Committee violated 52 U.S.C. § 30116(a) by soliciting excessive contributions; and the Committee violated 52 U.S.C. § 30120 by failing to fully comply with the disclaimer requirements with respect to its website and an e-mail solicitation. *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

II. FACTUAL SUMMARY

About six months before Ramsland officially declared candidacy and filed with the Commission, he launched a website called www.ramslandexploration.com. According to Respondents, the only publicly available information discussing Ramsland's exploratory efforts was on the internet—his exploratory website, two YouTube videos, a Facebook page, an excerpt of his interview on the Glenn Beck radio show, and e-mails, as described below.³

Ramsland held a "Meet and Greet" event on June 8, 2015, and footage shot during this event became the content for the two videos, "Washington is no Longer Listening to Us" and "Obama and Congress are out of Control," both of which were uploaded to YouTube on June 18, 2015, and later uploaded to the Exploratory Committee's website.⁴ On June 23, 2015, Ramsland

³ Ramsland's Exploratory Committee appears to have had a Facebook page that was no longer available to the general public when the Complaints were filed. We located some of Ramsland's posts on that page dating back to May 15, 2015, that refer to various Republican leaders, but they do not reference Ramsland's exploratory efforts. The first reference on that Facebook page to Ramsland's declaration of candidacy was on October 20, 2015: a banner that read "Ramsland for Congress." *See* <https://www.facebook.com/pages/Ramsland-Exploration/958463604186313>.

⁴ *See* <https://www.facebook.com/pages/Ramsland-Exploration/958463604186313> (video links) for videos that are no longer available on YouTube. In both video excerpts, Ramsland expresses his opinions regarding some of the ways in which Congressmen John Boehner and Pete Sessions have allegedly failed to hold President Obama accountable on a number of issues. *Id.*

1 was interviewed on the Glenn Beck radio show, and an excerpt from that interview was also
2 posted on the Exploratory Committee's website.⁵

3 Both complaints refer to a June 28, 2015, e-mail sent out with the subject line "Help Russ
4 Get In The Race," which contained links to information similar to that found on the Exploratory
5 Committee's website. The email, a print-out of which is attached to the Complaints, also asks
6 the reader to make a donation and forward the email to others.⁶ It also reads: "Russ believes to
7 **send a different message to Washington, we need to send a different messenger. A defeat of**
8 **Pete Sessions would send a powerful message to Republicans nationwide that voters are ready**
9 **to correct the course of this country.**"⁷ The printed email does not identify the sender or
10 recipient of the email.⁸

11 The website's home page contains a donation link. The donation page states that
12 contributions are limited to \$2,700 per individual, per election cycle, including the primary,
13 primary runoff, and general elections.⁹ Further, it instructs potential donors that contributions for
14 each election should be made by separate check to "Ramsland Exploration" for the primary, to
15 "Ramsland Exploration RO" for a primary runoff, and to "Ramsland Exploration G" for the

⁵ *Id.* During the interview, Ramsland stated that he was not a candidate for office but exploring the options of a possible candidacy. He invited listeners to view his website for further information and to make donations. *Id.*; see also <http://www.glennbeck.com/content/show/2015-06-23/> (archived version of the June 23, 2015, radio show).

⁶ See Complaints, Attachs.

⁷ *Id.* (emphasis in original).

⁸ *Id.*

⁹ See <http://www.ramslandexploration.com> (donation link).

1 general election.¹⁰ It also states that “contributions for all segments can be made during the
2 exploratory period and will be considered by Super PACs when evaluating the viability of a
3 candidate.”¹¹ Another page on the website entitled “Russell’s Core Values” states, among other
4 things, “A defeat of Pete Sessions would be good for a number of reasons ... YOU HAVE TO
5 SEND A DIFFERENT MESSENGER TO SEND A DIFFERENT MESSAGE.”¹²

6 Respondents state that Ramsland created an exploratory committee to “test the waters” to
7 determine whether he would become a candidate in the primary, and as such, he was not yet a
8 “candidate” for federal office.¹³ Respondents argue that Ramsland was allowed to spend and
9 receive funds while testing the waters, so long as he did not engage in any activities that would
10 make those funds “contributions” or “expenditures, and he did not do so.”¹⁴ According to the
11 Respondents, Ramsland did not authorize anyone to send e-mails on his behalf referring to or
12 identifying him as a candidate, and his website stated that Ramsland was not a candidate.¹⁵
13 Finally, Respondents assert that the funds raised (approximately \$225,000) did not exceed what
14 could reasonably be expected for an exploratory effort, and Ramsland has only accepted
15 donations from individuals that complied with the \$2,700 per individual, per election, limit.¹⁶

¹⁰ *Id.* The donation page indicates that the Committee could accept up to \$16,200. It appears that the Committee meant that married individuals and their spouses could each donate \$2,700 for the primary, primary runoff, and general elections, that is, a total of \$8,100 per spouse.

¹¹ *Id.* That same page also stated that “if the minimum funding level required for participation in a campaign by Super PACs is not achieved, all unexpended funds in the accounts will be returned pro-rata to donors.”

¹² *Id.* (emphasis in original).

¹³ Joint Resp. at 1-2.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

¹⁶ *Id.*, Attach. Russell Ramsland Aff. at 1.(Aug. 11, 2015).

1 The Committee's first report, the 2015 Year-End report, indicates that between April 23, 2015,
2 and August 10, 2015, Ramsland received eleven contributions totaling \$24,900 that contributors
3 designated for a possible primary runoff.

4 **III. LEGAL ANALYSIS**

5 **A. Law**

6 Within fifteen days of becoming a candidate, the candidate must designate a principal
7 campaign committee by filing a Statement of Candidacy.¹⁷ The principal campaign committee
8 must then file a Statement of Organization within 10 days of its designation,¹⁸ and must file
9 disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b). Once
10 an individual becomes a candidate, all reportable amounts from the beginning of the testing-the-
11 waters period must be disclosed on the first financial disclosure report filed by the candidate's
12 committee, even if the funds were received or expended prior to the current reporting period.¹⁹

13 The Commission has established limited exceptions from these thresholds, which permit
14 an individual to test the feasibility of a campaign for federal office without becoming a candidate
15 under the Act. Commonly referred to as the "testing the waters" exceptions, 11 C.F.R. §§ 100.72
16 and 100.131 exclude from the definitions of "contribution" and "expenditure," respectively,
17 those funds received, and payments made, to determine whether an individual should become a
18 candidate.²⁰ "Testing the waters" activities include, but are not limited to, payments for polling,

¹⁷ § 30102(e)(1); 11 C.F.R. § 101.1(a); *See* Factual and Legal Analysis at 2-3, MUR 7116 (Russell); Factual and Legal Analysis at 5, MUR 6449 (Bruning).

¹⁸ 52 U.S.C. § 30103(a).

¹⁹ 11 C.F.R. §§ 101.3, 104.3(a)-(b).

²⁰ The Commission has emphasized the narrow scope of these exemptions to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) ("The Commission has, therefore, amended the rules to ensure

1 telephone calls, and travel.²¹ An individual who is “testing the waters” need not register or file
2 disclosure reports with the Commission unless and until the individual subsequently decides to
3 run for federal office *or* conducts activities that indicate he or she has decided to become a
4 candidate.²² All funds raised and spent for “testing the waters” activities are, however, subject to
5 the Act’s limitations and prohibitions.²³

6 Commission regulations set out five non-exhaustive factors to be considered in
7 determining whether an individual has decided to become a candidate. Among other things, an
8 individual indicates that he or she has gone beyond “testing the waters” and has decided to
9 become a candidate by raising funds in excess of what could reasonably be expected to be used
10 for exploratory activities or undertaking activity designed to amass campaign funds that would
11 be spent after he or she becomes a candidate.²⁴ These regulations seek to draw a distinction
12 between activities directed toward evaluating the feasibility of one’s candidacy, and conduct
13 signifying that one has reached a private decision to become a candidate.²⁵

that the ‘testing the waters’ exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act”). *See* 52 U.S.C. § 30101(8), (9).

²¹ 11 C.F.R. §§ 100.72(a), 100.131(a).

²² *See id.*; *see also* Advisory Op. 1979-26 (Grassley).

²³ 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁴ *Id.* §§ 100.72(b), 100.131(b). The other factors listed in the regulations are (1) using general public political advertising to publicize his or her intention to campaign for federal office, (2) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office, (3) conducting activities in close proximity to the election or over a protracted period of time, or (4) taking action to qualify for the ballot under state law. *Id.*

²⁵ *See* Advisory Op. 1981-32 (Askew).

1 Treasurers of congressional campaign committees are required to file quarterly reports no
2 later than the 15th day following the close of the immediately preceding calendar quarter, except
3 for the Year-End Report, which is due by January 31st.²⁶ The Act further states that (1) no
4 person may make contributions to any candidate and his authorized political committee with
5 respect to any election for federal office which, in the aggregate, exceed \$2,700 (2016 cycle
6 limit); (2) the individual contribution limit applies on a per-candidate, per-election basis; and
7 (3) no candidate or committee may knowingly accept contributions in violation of this limit.²⁷

8 In relevant part, the Commission's regulations state that the disclaimer requirements
9 apply to political committees that make or send public communications, websites of political
10 committees made available to the general public, and any person making public communications
11 containing express advocacy or soliciting contributions.²⁸ Also e-mails of more than 500
12 substantially similar communications sent by a political committee must contain a disclaimer.²⁹
13 A "public communication" is defined as "a communication by means of any broadcast, cable or
14 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
15 telephone bank to the general public, or any other form of general public political advertising."³⁰
16 However, the term "general public political advertising" does not include communications over

26 11 C.F.R. § 104.5(a).

²⁷ 52 U.S.C. §§ 30116(a)(1)(A), (f). “Election” is defined to include, among other things, a general, special, primary, or runoff election. *Id.* § 30101(1)(A) and (25).

28 52 U.S.C. § 30120.

²⁹ 11 C.F.R. § 110.11(a)(1).

30 1-1 C.F.R. § 100.26.

1 the internet, except for communications placed for a fee on another person's website.³¹
2 Disclaimers for printed communications must be conspicuous and clearly state that they are paid
3 for or authorized by a candidate or candidate's committee, be of sufficient type size to be
4 readable, and be in a printed box set apart from the rest of the communication.³²

5 **B. Analysis**

6 Given the unique facts of this case, the Commission exercises its prosecutorial discretion
7 and dismisses the allegations. The amount Ramsland received, \$24,900, is both modest and a
8 small percentage of his total receipts, and most of Ramsland's written materials say explicitly
9 that Ramsland was merely contemplating a run.³³

10 In addition, with respect to the allegation that Ramsland solicited or received donations in
11 excess of \$2,700 per election, the information suggests that the Committee, in informing donors
12 that they could contribute up to \$16,200, meant to convey that married individuals and their
13 spouses could each donate \$2,700 for the primary, primary runoff, and general elections, that is,

³¹ *Id.* The Explanation and Justification ("E&J") for Internet Communications at 71 Fed. Reg. 18,589 (Apr. 12, 2006) notes that "The Commission does not consider e-mails to be a form of "general public political advertising" because there is virtually no cost associated with sending email communications, even thousands of e-mails to thousands of recipients, and there is nothing in the record that suggests a payment is normally required to do so." *Id.* at 18,596. In addition, the E&J provides that the Congress does not view e-mails in the same manner as mass mailings as indicated by its revision of its own franking rules to remove mass e-mail communications from the list of "unsolicited mass communications" requiring pre-authorization from the Franking Commission. *Id.* at 18,596-97.

³² 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).

³³ In a somewhat similar case, the Commission found that merely receiving funds designated for the general election during the testing the waters phase did not *per se* render an individual a candidate. MUR 5703 (Rainville), First Gen. Counsel's Report at 6 (June 19, 2006). In that case, the Commission concluded that the amount received (\$4,000) and the number of checks designated for the general election (two) compared to the \$100,000 raised did not demonstrate the individual's intent to be a candidate, especially since there was no information in the record that she or her committee specifically solicited the general election contributions. Ramsland, who both received and solicited contributions, accepted eleven contributions totaling \$24,900 that were designated for a possible primary runoff election, out of a total amount raised of \$222,641. While the number, total amount, and the percentage of overall contributions received are somewhat higher in Ramsland's case, they are not significantly so.

1 a total of \$8,100 per spouse. Therefore, the Commission dismisses this allegation as a matter of
2 prosecutorial discretion.

3 The Commission also exercises its prosecutorial discretion and dismisses the disclaimer
4 allegations. As to the website, the available information suggests that Ramsland did not pay to
5 have any of his internet communications placed on another person's website. Therefore,
6 assuming that Ramsland had not yet become a candidate (and, therefore, his exploratory
7 committee had not yet met the definition of a "political committee"), the exploratory
8 committee's website was excluded from the definition of a "public communication" and did not
9 require a disclaimer.³⁴ However, if Ramsland triggered candidacy earlier than the date he filed
10 his statement of candidacy, the website needed an appropriate disclaimer.³⁵ The website did not
11 contain a "paid for" disclaimer, but it did identify the entity responsible for it: the "Russell
12 Ramsland Exploratory Committee."³⁶ In addition, the URL for the website clearly identifies the
13 responsible entity.³⁷ Given these considerations, the Commission exercises its prosecutorial
14 discretion and dismisses the website disclaimer allegation.³⁸ For much the same reasons, the
15 Commission dismisses the allegation that the exploratory committee's e-mails failed to include a
16 disclaimer.

³⁴ See 11 C.F.R. § 100.26; *see also* Internet Communications, 71 Fed. Reg. 18,589, 18,600-01 (Apr. 12, 2006) (Explanation and Justification").

³⁵ See 11 C.F.R. § 100.26, 110.11(a)(1).

³⁶ See Complaints, Attach.

³⁷ See www.ramslandexploration.com.

³⁸ See, e.g., MUR 6785 (Kwasman) (committee's partial disclaimer on an exploratory committee website merited dismissal since it was unlikely that the public was misled); MUR 6770 (Hale for Congress); MUR 6963 (Bullwinkel).

Accordingly, the Commission dismisses as a matter of prosecutorial discretion the allegations that: Russell Ramsland violated 52 U.S.C. § 30102(e) and 11 C.F.R. § 101.1(a); Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles Armstrong in his official capacity as treasurer violated 52 U.S.C. §§ 30103(a), 30104 and 11 C.F.R. §§ 102.1(a), 102.2(a)(1), and (a)(1)(iv) by filing untimely candidate and committee registrations and failing to file an October 2015 Quarterly Report; Ramsland and the Committee violated 52 U.S.C. § 30116(a) by accepting funds in excess of the Act's limitations; and the Exploratory Committee website and solicitation did not contain the appropriate disclaimers. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).